Supreme Court, U.S.
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No. 86-1728

In The
Supreme Court of the United States
October Term, 1986

—o—

LEO CAHOON,

Appellant,

vs.

ALTON PACKAGING CORPORATION, JEFFERSON SMURFIT CORPORATION, and JEFFERSON SMURFIT GROUP, LTD.,

Appellees.

—o—

On Appeal From The Appellate Court Of Illinois, Fifth District

—o—

MOTION TO DISMISS APPEAL OR TO AFFIRM THE JUDGMENT OF THE STATE COURT

—o—

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QUESTION PRESENTED

Did Appellant, LEO CAHOON, timely raise a Federal question in the State Court, when he failed to do so until filing a Petition for Rehearing after the decision of the Illinois Appellate Court, even though before any Briefs had been filed in the Appellate Court, the Illinois Supreme Court had rendered an opinion that the Illinois Courts have no jurisdiction to entertain cases of alleged civil rights violations, except on administrative review from the Illinois Human Rights Commission, and even though this lack of jurisdiction was a basis of the appeal before the Appellate Court and the Appellate Court decided the issue without any discussion of the U. S. Constitution or Amendments?

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MOTION TO DISMISS APPEAL OR TO AFFIRM THE JUDGMENT OF THE STATE COURT

Now come the Appellees, ALTON PACKAGING CORPORATION, JEFFERSON SMURFIT CORPORATION, and JEFFERSON SMURFIT GROUP, LTD., by AL J. PRANAITIS of HOAGLAND, FITZGERALD, SMITH & PRANAITIS, their attorneys, and hereby move this Honorable Supreme Court to dismiss this Appeal or to affirm the judgment of the Illinois Appellate Court, Fifth District, and in support thereof, said Appellees state that the Federal questions sought to be reviewed were neither timely nor properly raised before the State Courts of the State of Illinois nor expressly passed on by the State Courts of the State of Illinois.

———o———

OPINION BELOW

The opinion of the Illinois Appellate Court, Fifth District, is attached as Appendix A to the Appellant's Jurisdictional Statement, and is reported at 148 Ill.App.3d 480, 499 N.E.2d 522, 101 Ill.Dec. 934 (Fifth District, 1986), leave to appeal denied (Feb. 6, 1987).

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STATEMENT OF THE CASE

Appellant, LEO CAHOON (hereinafter referred to as "CAHOON"), filed an action in the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, against the Appellees, ALTON PACKAGING CORPORATION; JEFFERSON SMURFIT CORPORATION; and JEF-

FERSON SMURFIT GROUP, LTD. (collectively referred to hereinafter as "ALTON"), claiming that his termination from employment with ALTON had been in violation of the Federal Age Discrimination in Employment Act (ADEA) (29 U.S.C.A., Par. 621, et seq.), and in breach of an oral promise. The case proceeded to jury trial and resulted in judgment in favor of CAHOON under the ADEA and against CAHOON and in favor of ALTON with respect to the breach of oral promise claim.

After CAHOON had filed his suit in the Circuit Court, but prior to the matter going to trial, the administrative proceeding which was pending before the Illinois Human Rights Commission under the Illinois Human Rights Act (Ill.Rev.Stat., Ch. 68, Par. 1-101, et seq.) was stayed pending the outcome of the suit. The stay has never been lifted, and CAHOON's age discrimination claim is still pending before the Illinois Human Rights Commission.

After the judgment was entered in the Circuit Court, ALTON duly appealed to the Illinois Appellate Court, Fifth District, from the judgment in favor of CAHOON and against ALTON on the ADEA claim. CAHOON did not cross-appeal from the judgment entered against him and in favor of ALTON on the breach of oral promise claim, and that part of the case is not in issue.

In the Brief filed in behalf of ALTON in the Illinois Appellate Court, eight different issues were raised attacking the judgment that had been rendered in favor of CAHOON. The first issue raised was whether the judgment entered in favor of CAHOON and against ALTON was void and unenforceable because the Trial Court lacked subject matter jurisdiction over the ADEA claim. In Septem-

ber of 1985, and prior to the filing of the Briefs before the Illinois Appellate Court in this case, the Illinois Supreme Court had issued its opinion in *Mein v. Masonite Corporation,* 109 Ill.2d 1, 485 N.E.2d 312, 92 Ill.Dec. 501 (1985). *Mein* was discussed and quoted at length in the argument presented by ALTON on the jurisdictional issue raised in the Brief. A copy of that portion of ALTON's Brief that was filed in the Appellate Court is attached hereto as Appendix A.

In the Brief filed by CAHOON in the Illinois Appellate Court, Fifth District, no argument was made that it would be in violation of the Supremacy Clause of the United States Constitution or any other part of the Constitution or Amendments thereto for the Illinois Appellate Court to rule that the Circuit Court did not have jurisdiction over CAHOON's age discrimination claim. The part of CAHOON's Brief filed in the Illinois Appellate Court, Fifth District, discussing the jurisdictional issue is attached hereto as Appendix B.

Thereafter, the Illinois Appellate Court rendered its opinion vacating and dismissing the judgment that had been entered in favor of CAHOON in the Trial Court. The Appellate Court opinion agreed with ALTON's argument that the Circuit Court had lacked jurisdiction over CAHOON's age discrimination claim. Nowhere in the Appellate Court opinion is there any discussion of the Supremacy Clause or other parts of the U.S. Constitution or Amendments thereto. Of course, because the Appellate Court decided the case on the jurisdictional ground, the Appellate Court did not reach the seven other issues that had been raised by ALTON on the appeal to the Illinois Appellate Court.

Thereafter, CAHOON filed a Petition for Rehearing in the Illinois Appellate Court, Fifth District, which, for the first time, asserted a violation of the Supremacy Clause of the United States Constitution and other portions of the Constitution or Amendments thereto. The Petition for Rehearing was denied wihout any opinion being written by the Illinois Appellate Court. Subsequently, CAHOON filed a Petition for Appeal as a Matter of Right or, Alternatively, For Leave to Appeal to the Illinois Supreme Court, which also was denied without an opinion being written.

—o—

ARGUMENT

THE FAILURE OF APPELLANT TO PROPERLY AND TIMELY RAISE A QUESTION UNDER THE UNITED STATES CONSTITUTION BEFORE THE STATE COURT AND THE LACK OF ANY DECISION BY THE STATE COURT OF A CONSTITUTIONAL ISSUE DEPRIVES THIS UNITED STATES SUPREME COURT OF JURISDICTION

It is well settled that an attempt to raise a Federal question for the first time in a Petition for Rehearing, after judgment, comes too late and will not be recognized as properly within the jurisdiction of the United States Supreme Court. (*Loeber v. Schroeder,* 149 U.S. 580, 37 L.Ed. 856, 13 S.Ct. 934; *Sayward v. Denny,* 158 U.S. 180, 39 L.Ed. 941, 15 S.Ct. 777.) It is also well settled that an attempt to raise a Federal question in a State Court after judgment, on a Petition for Rehearing, does not furnish a basis

for review by the Supreme Court of the United States, unless the State Court actually entertains the question and decides it. (*Jett Brothers Distilling Co. v. Carrollton,* 252 U.S. 1, 64 L.Ed. 421, 40 S.Ct. 255; *Wall v. Chesapeake & O.R. Co.,* 256 U.S. 125, 65 L.Ed. 856, 41 S.Ct. 402; *Herndon v. Georgia,* 295 U.S. 441, 79 L.Ed. 1530, 55 S.Ct. 794.) An exception to these well-established rules applies where the question first arises from the unanticipated act of the State Court in giving to a Statute a new construction which threatens rights under the Constitution. (*Missouri ex rel. Missouri Ins. Co. v. Gehner,* 281 U.S. 313, 74 L.Ed. 870, 50 S.Ct. 326; *Great Northern R. Co. v. Sunburst Oil & Ref. Co.,* 287 U.S. 358, 77 L.Ed. 360, 53 S.Ct. 145; *Herndon v. Georgia,* supra.) On the other hand, the exception will not apply if the ruling should have been anticipated, particularly, where the Court has, in substance, construed the Statute in substantially the same fashion before. (*Herndon v. Georgia,* supra.)

Before the Illinois Appellate Court, Fifth District, ALTON, as the Appellant there, filed its Brief by mailing it to the Appellate Court on January 13, 1986. Thereafter CAHOON, who was the Appellee in the Appellate Court, filed his Brief by mailing it to the Illinois Appellate Court on March 25, 1986. Prior to the filing of these Briefs, the Illinois Supreme Court had rendered its opinion in *Mein v. Masonite Corporation,* (9/20/85) 109 Ill.2d 1, 485 N.E.2d 312, 92 Ill.Dec. 501 (Reh. den. 12/2/85). In that case, which was cited and quoted at length in ALTON's Brief filed with the Illinois Appellate Court, the Illinois Supreme Court held that:

> 8-111(D) of the Illinois Human Rights Act, Ill.Rev. Stat., Ch. 68, Par. 8-111(D)] which is set out above,

> "The legislature has specifically provided through Section 8-111(D) of the present Act [Section that Courts have no jurisdiction to hear independent actions for civil rights violations. It is clear that the legislature intended the Act, with its comprehensive scheme of remedies and administrative procedures, to be the exclusive source for redress of alleged human rights violations [Citations removed]. Debates on Senate Bill 1377, which became the Human Rights Act, confirm that the legislature intended by the Act to avoid direct access to the Courts for redress of civil rights violations. (81st Ill. Gen. Assem., Transcript of House Proceedings, June 22, 1979, at 133, 146; June 25, 1979, at 87.) Significantly, a proposed Amendment to the Bill which would have allowed civil actions in addition to or in lieu of the remedies provided in the Act was tabled. 81st Ill. Gen. Assem., Transcript of House Proceedings, June 22, 1977, at 158-59." (485 N.E.2d at 315, 92 Ill.Dec. at 504)

In *Mein* the plaintiff's claim was age discrimination.

Significantly, in an opinion of the Illinois Appellate Court rendered one and one half years before *Mein,* the Court had held that the Illinois Courts had no jurisdiction to entertain claims of civil rights violations, except in reviewing decisions of the Illinois Human Rights Commission via the Administrative Review Act or in granting temporary relief during the pendency of the administrative proceedings before the Human Rights Department or the Human Rights Commission. (*People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track Corporation,* 122 Ill.App.3d 517, 461 N.E.2d 505, 77 Ill.Dec. 882 (1st Dist., 1984).) The Appellate Court stated:

> "It is settled that even if a court is one of general jurisdiction, when its power to act in a particular matter is controlled by Statute, the court is governed by the rules of limited jurisdiction." (461 N.E.2d at 508, 77 Ill.Dec. at 885.)

Arlington Park Race Track was also cited and discussed in Alton's Appellant's Brief filed with the Illinois Appellate Court.

Despite the earlier decision of the Illinois Appellate Court in *Arlington Park Race Track* and the earlier decision of the Illinois Supreme Court in *Mein,* and despite the discussion of these cases and raising of the jurisdictional issue in ALTON's Brief filed with the Illinois Appellate Court, CAHOON made no argument before the Appellate Court that a finding of lack of jurisdiction in this age discrimination claim would be violative of the Supremacy Clause of the U. S. Constitution. The first time CAHOON made any argument that the Statute, as so construed, was violative of the Supremacy Clause was in the Petition for Rehearing filed by CAHOON after the Appellate Court rendered its opinion in this case, as is admitted by CAHOON in the Jurisdictional Statement that he has filed with this U. S. Supreme Court. (See page 5 of the Jurisdictional Statement filed by CAHOON.)

The Appellate Court in this case did not base its decision on or otherwise discuss the Supremacy Clause of the United States Constitution or any other portion of the Constitution or any Amendment thereto. The Petition for Rehearing filed by CAHOON with the Appellate Court was denied without an opinion; and the Petition filed by CAHOON with the Illinois Supreme Court was denied without opinion.

In view of the earlier opinions in *Mein* and *Arlington Park Race Track,* and in view of the jurisdictional issue raised by ALTON before the Appellate Court, it cannot be said that the Appellate Court's ruling in this case was unanticipated. The Supremacy Clause argument, having

been presented for the first time in the Petition for Rehearing filed by CAHOON in the Appellate Court was not timely and properly made. This Court should rule that it is without jurisdiction to entertain this appeal.

———o———

CONCLUSION

Because of the above and foregoing reasons, the Appellees, ALTON PACKAGING CORPORATION, JEFFERSON SMURFIT CORPORATION, and JEFFERSON SMURFIT GROUP, LTD., pray that the Court dismiss this appeal or affirm the judgment of the Illinois Appellate Court for the Fifth District.

Respectfully Submitted,

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APPENDIX

APPENDIX A

NO. 5-85-0770

IN THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

LEO CAHOON, Plaintiff-Appellee, -vs- ALTON PACKAGING CORPORATION; JEFFERSON SMURFIT CORPORATION; and JEFFERSON SMURFIT GROUP, LTD., Defendants-Appellants.	Appeal from the Circuit Court for the Third Judicial Circuit, Madison County, Illinois No. 82-L-627 Honorable Horace L. Calvo, Judge Presiding

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

5. *ARGUMENT*

A

THE JUDGMENT ENTERED BY THE TRIAL COURT AS TO THE AGE DISCRIMINATION CLAIM IS VOID AND UNENFORCEABLE BECAUSE THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION OVER THAT CLAIM

Section 8-111(D) of the Illinois Human Rights Act (hereinafter H.R.A.) (Ill.Rev.Stat., Ch. 68, Par. 8-111(D)), effective July 1, 1980, provides:

> "(D) *Limitation.* Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject matter of an alleged civil rights violation other than as set forth in this Act."

Section 1-103(D) of the H.R.A. (Ill.Rev.Stat., Ch. 68, Par. 1-103(D)) defines the term "civil rights violation" as including, without limitation, the acts set forth in Sections 2-102, 2-103, 3-102, 3-103, 3-104, 3-104.1, 3-105, 4-102, 4-103, 5-102, 5A-102, and 6-101 of the H.R.A.

Section 2-102(A) of the H.R.A. provides:

> "It is a civil rights violation:
>
> (A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination."

Section 1-103(Q) of the H.R.A. (Ill.Rev.Stat., Ch. 68, Par. 1-103(Q)) defines the term "unlawful discrimination" in the following manner:

> "(Q) *Unlawful Discrimination.* 'Unlawful discrimination' means discrimination against a person be-

cause of his or her race, color, religion, national origin, ancestry, *age,* sex, marital status, handicap or unfavorable discharge from military service as those terms are defined in this Section." (emphasis added.)

The term "age" is defined under Section 1-103(A) (Ill.Rev.Stat., Ch. 68, Par. 1-103(A)) as "the chronological age of a person who is 40 but not yet 70 years old."

Very recently the Illinois Supreme Court, in the case of *Mein v. Masonite Corporation,* (Docket No. 60422, Sept., 1985), was asked to construe the meaning of the jurisdictional limitation imposed on the Illinois Courts by Section 8-111(D) of the H.R.A. In that case, the Supreme Court made it very clear that the Circuit Courts of this State have no subject matter jurisdiction to entertain, *ab initio,* suits for civil rights violations alleged to have occurred in this State. The Supreme Court stated:

> "*The legislature has specifically provided through section 8-111(D) of the present Act, which is set out above, that courts have no jurisdiction to hear independent actions for civil rights violations. It is clear that the legislature intended the Act, with its comprehensive scheme of remedies and administrative procedures, to be the exclusive source for redress of alleged human rights violations.* (See *Thakkar v. Wilson Enterprises, Inc.* (1983), 120 Ill.App.3d 878; *Dykstra v. Crestwood Bank* (1983), 117 Ill.App.3d 821; *Armstrong v. Freeman United Coal Mining Co.* (1983), 112 Ill.App.3d 1020.) Debates on Senate Bill 1377, which became the Human Rights Act, confirm that the legislature intended by the Act to avoid direct access to the courts for redress of civil rights violations. (81st Ill.Gen.Assem., Transcript of House Proceedings, June 22, 1979, at 133, 146; June 25, 1979, at 87.) Significantly, a proposed amendment to the bill which would have allowed civil actions in addition to or in

> lieu of the remedies provided in the Act was tabled. 81st Ill.Gen.Assem., Transcript of House Proceedings, June 22, 1979, at 158-59." (*Mein v. Masonite Corporation, supra,* slip opinion p. 4; emphasis added.)

As explained earlier by the Illinois Appellate Court in *People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track Corporation,* (1st Dist. 1984) 122 Ill.App.3d 517, 461 N.E.2d 505, 77 Ill.Dec. 882 at 884-885, the only jurisdiction the Illinois Circuit Courts have in cases of alleged civil rights violations consists of reviewing decisions of the Human Rights Commission via the Administrative Review Act (Ill.Rev.Stat., Ch. 68, Par. 8-111(A)) and granting temporary relief during the pendency of administrative proceedings before the Human Rights Department or the Human Rights Commission. (Ill.Rev.Stat., Ch. 68, Par. 7-104)

It is clear from the face of the Plaintiff's Amended Complaint (C118) that the Plaintiff sued the Defendants because of alleged unlawful discrimination in employment because of Plaintiff's age, specifically, Plaintiff's discharge from employment, which occurred in this State on December 1, 1981. It is also clear that the allegations of the Plaintiff's Amended Complaint allege a "civil rights violation", as that term is defined in the H.R.A. Because of Section 8-111(D) of the H.R.A., the Circuit Court was without subject matter jurisdiction to entertain this part of the Plaintiff's suit, and the judgment entered by the Circuit Court in favor of the Plaintiff is void and unenforceable.

A judgment entered by a Court which lacks subject matter jurisdiction is void and can be attacked on that basis at any time, including for the first time on appeal;

for there can be no waiver of subject matter jurisdiction, nor can a party be estopped by failing to raise the question of jurisdiction in the Trial Court. (*Toman v. Park Castles Apartment Building Corp.,* (1940), 375 Ill. 293, 31 N.E.2d 299, 302; *People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track Corp., supra,* 77 Ill.Dec. at 885; *Talandis Const. Corp. v. Illinois Building Authority,* (1st Dist. 1978), 60 Ill.App.3d 715, 377 N.E.2d 237, 18 Ill.Dec. 84, 87; *Hill v. Daley,* (1st Dist. 1975), 28 Ill.App.3d 202, 328 N.E.2d 142; 14 I.L.P., Courts, Section 24, pp. 194-195.)

The Plaintiff might argue that subject matter jurisdiction of this cause was given to the Illinois Courts by the ADEA, specifically that part of the ADEA which states:

> "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter. . . " (29 U.S.C.A., Par. 626(c)(1).)

However, the mere fact that the United States Congress, by a Federal Act, declares that State Courts shall have concurrent jurisdiction of a particular cause of action does not require a State's Courts to exercise jurisdiction over such actions. (*Ex parte Crandall,* (7th Cir. 1931), 53 F.2d 969, 970, cert. den., 285 U.S. 540, 52 S.Ct. 312, 76 L.Ed. 933; 21 C.J.S., Courts, Sec. 126, p. 190.) Each state, subject to restrictions of the Federal Constitution, determines the limits of jurisdiction of its own Courts and the characters of the controversies which shall be heard in them. (*Wall v. Chesapeake & Ohio Ry. Co.* (1919), 290 Ill. 227, 125 N.E. 20) This seems particularly so when the cause

of action involves a right created by Statute rather than by common law. (See *People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track Corp., supra,* 77 Ill.Dec. at 885; and see *Wall v. Chesapeake & Ohio Ry. Co., supra,* involving the statutory creation of a right of action for wrongful death.)

In Illinois there was no common law cause of action for age discrimination. Although the Illinois Circuit Courts would have subject matter jurisdiction over alleged civil rights violations based on age under the ADEA if they were Courts of "competent jurisdiction", they are not Courts "of competent jurisdiction" for any "civil rights violations", except for temporary relief in matters pending before the Human Rights Department or the Human Rights Commission or for review of decisions of the Commission.

The judgment of the Circuit Court in this cause, insofar as it pertains to the Age Discrimination claim, should be vacated as void and unenforceable.

(Pages 21-25 of Alton's Appellant's Brief before the Illinois Appellate Court.)

APPENDIX B

No. 5-85-0770

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

LEO CAHOON,	)	Appeal from the Circuit Court of Madison County,
Plaintiff-Appellee,	)	Illinois
vs.	)	
	)	No. 82-L-627
ALTON PACKAGING CORPORATION; et al.,	)	
	)	The Honorable Horace L. Calvo,
Defendants-Appellants.	)	Judge Presiding.

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ORAL ARGUMENT REQUESTED

A. *THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION.*

Plaintiff's Complaint alleged a violation of the Federal Age Discrimination Employment Act (ADEA), 29 U.S.C.A. § 621, *et seq.* (C. 118-125) 29 U.S.C.A. § 626(C)(1) states:

> "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter . . . ."

It is obvious from this statutory language that the United States Congress has determined that state and federal courts shall have concurrent jurisdiction, which means that the plaintiff may institute his action in either state or federal court. *See, e.g., Jacobi v. High Point Label, Inc.,* 442 F.Supp. 518, 520 (M.D. N.C. 1977) "Clearly Congress intended for a person aggrieved by a violation of the Age Discrimination Act to have the right to bring his action in state court." 442 F.Supp. at 521.

Eagleburger v. City of Springfield, 677 S.W.2d 914 (Mo. Ct.App. 1984) reached the same result and held it had subject matter jurisdiction of an ADEA claim. This determination is consistent with the legislative history which stated the ADEA provided for concurrent federal and state actions. 1967 *U.S. Code Cong. & Ad. News* (90th Cong) at 2218. The same decision was reached in *Baldwin v. Sears,* 667 F.2d 458, 461 (5th Cir. 1982). In fact, the only apparent dispute in the area of jurisdiction of the ADEA is whether a defendant has the right to remove to federal court a case filed in state court. *See, e.g., Jacobi*

v. High Point Label, Inc., 442 F.Supp. 518 (M.D. N.C. 1977) and the discussion therein.

Whether one considers the obligation of state courts to enforce claims arising under federal statutes as obligatory or permissive makes no difference in the instant case, as even those cases which suggest the state court's duty is only permissive still prohibit discrimination against federeral claims. *See,* Wright & Miller, *Federal Practice and Procedure,* Vol. 16, § 4024 (1977). As pointed out therein, it is generally accepted that the state courts are not free to refuse enforcement of federal claims, and that rights created by act of Congress are properly enforced in state court absent some contrary provision by Congress. Defendants erroneously rely on *Ex Parte Crandall,* 53 F.2d 969 (7th Cir. 1931) as in 1958 the Illinois Supreme Court held that *Ex Parte Crandall* "no longer represents the law." *James v. Grand Truck Western RR Co.,* 14 Ill.2d 356, 152 N.E.2d 858, 866 (1958).

In *Alberty v. Daniel,* 25 Ill.App.3d 291, 323 N.E.2d 110 (1st Dist. 1974), it was held that a claim under the Federal Civil Rights Act, 42 U.S.C. § 1983, was properly brought in the Illinois Circuit Court and that the courts of the State of Illinois had concurrent jurisdiction under that statute. *Accord, Reidelberger v. Bi-State Dev. Agency,* 8 Ill.2d 121, 133 N.E.2d 272 (Ill. 1956), holding that in the absence of federal constitutional or statutory provisions limiting jurisdiction to federal courts, state courts have authority to enforce rights under the Constitution or statutes of the United States. *See also, Luker v. Nelson,* 341 F.Supp. 111 (N.D. Ill. 1972). The same result has been reached in cases brought under the Federal Employers'

Liability Act, 45 U.S.C.A. § 56. *Miles v. Illinois Central Ry. Co.*, 315 U.S. 698, 62 S.Ct. 827, 86 LEd. 1129 (1942).

It is, therefore, evident that the Illinois Circuit Courts are courts of competent jurisdiction with the authority to entertain actions brought under federal statutes, or the Federal Constitution, absent an express Congressional mandate to the contrary, and there is no such mandate with respect to the ADEA.

Defendants' reliance upon the recent case of *Mein v. Masonite Corp.*, — Ill.2d —, 485 N.E.2d 312 (1985) is also misplaced. In *Mein*, plaintiff filed a suit alleging wrongful discharge in violation of the public policy of the State of Illinois, alleging that the public policy prohibits age discrimination in the work place. The suit was not based upon the Illinois Human Rights Act nor upon the Federal ADEA, but rather was asserted as a common law cause of action for retaliatory discharge pursuant to the rule of *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 384 N.E.2d 353 (1978). The Supreme Court, in deciding *Mein*, found that the legislature had specifically provided in the Human Rights Act that Illinois courts have no jurisdiction to hear independent actions for civil rights violations "*except as otherwise provided by law.*" *Mein*, 485 N.E.2d at 315, *quoting, Ill. Rev. Stat.*, 1983 Ch 68, § 8-111(b). (emphasis added)

The Illinois legislature has no authority to restrict, overrule, or otherwise reject substantive rights created by the United States Congress. *Parks v. Ill. Dept. of Mental Health*, 110 Ill.App.3d 184, 441 N.E.2d 1209 (1st Dist. 1982).

(Pages 20-22 of Cahoon's Appellee's Brief before the Illinois Appellate Court.)